उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(12)

मामला क्रमांक Cr A 84 सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 84 OF 2002

DIVISION BENCH: **HON. SHRI L.C. BHADOO, &**
HON. SHRI DHIRENDRA MISHRA, JJ

APPELLANT Krishnadas @ Kishandas, S/o Shyamlal Das, aged about 26 years, R/o Behind I.T.I. School, Dudhi, Distt. Sonbhadra (U.P.)

Versus

RESPONDENT State of Chhattisgarh
Through P.S. Chalgali,
Distt. Sarguja (Ambikapur)

Present:
Ms. Meenu Banerjee, counsel for the appellant.
Mr. Ashish Shukla, Govt. Advocate for the State.

ORAL JUDGMENT

(1.5.2007)

PER L.C. BHADOO, J

This appeal is directed against the judgment of conviction and order of sentence dated 5th January 2002 passed by Sessions Judge, Ambikapur in Sessions Trial No. 266/2000 whereby learned Sessions Judge after holding the accused/appellant guilty under Sections 302 of the IPC, [illegible], sentenced him to undergo imprisonment for life and pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for one year.

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मामला क्रमांक Cr.A. 84 सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	2. Case of the prosecution, in brief, is that Koushalya Bai (since deceased) was wife of the appellant. Since last 10 months Koushalya was residing at her parental house. The accused was doubting the fidelity of Koushalya that she was having illicit relationship with her brother-in-law Munari. On 25.6.2000 accused came to the parental house of Koushalya and enquired from her about the illicit relationship. At that time accused with an intention to cause death of Koushalya attacked her with knife, Koushalya in order to save herself started running and came out of the house. Even then, the accused chased her and attacked her with knife causing grievous injuries. Thereafter, Koushalya went to Police Station Chalgali and lodged the report (Ex.P/16). After registering the crime, investigating officer took up the investigation and sent Koushalya for treatment to Primary Health Center, Chalgali where Dr. Janeshwar Singh (PW-4) started treating her and also recorded her dying declaration Ex.P/8. However, when Koushalya was being taken to Ambikapur, she died on way. Investigating officer after giving notice (Ex.P/1) to the Panchas, prepared inquest (Ex.P/2) on the dead body of Koushalya. Site plan (Ex.P/3) of the place of occurrence was prepared by the investigating officer. The accused while in police custody gave memorandum (Ex.P/4) regarding the place where he kept the weapon of offence knife and pursuant to which, he got recovered the knife under Ex.P/5. Dead body of Koushalya was sent for postmortem examination to Community Health Centre, Pratappur	

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मामला क्रमांक Cr.A. 94 सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

under Ex.P/10 where Dr. Narayan Sing (PW-7) conducted postmortem and prepared the postmortem report (Ex.P/15), in which he opined that cause of death was shock due to intra peritoneal haemorrhage leading to cardio respiratory arrest and death was homicidal in nature.

3. After completion of investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Ramanujganj who in turn committed the case to the Sessions Judge, Ambikapur where prosecution in order to establish charge against the accused examined 8 witnesses at the trial. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that his wife was having illicit relationship with her brother-in-law Munari and he had caught his wife in a lascivious position. On the fateful day also Munari was with her wife and on account of the matter being public Munari attacked his wife with knife and has falsely implicated him in the crime in question.

4. Learned Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused as aforementioned.

5. We have heard Ms. Meenu Banerjee, counsel appearing on behalf of the accused/appellant and Mr. Ashish Shukla, Govt. Advocate for the State/respondent.

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मामला क्रमांक Cr.A. 64 सन् 200 2

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

6. Ms. Banerjee, has not disputed the homicidal death of Koushalya Bai. Moreover, from the ocular evidence of eyewitness PW-2 Dilip Das, PW-3 Vinod, and medical evidence of PW-7 Dr. Narayan Singh, who after conducting postmortem on the body of Koushalya Bai opined that death was homicidal in nature, it is established that death of Koushalya Bai is homicidal in nature.

7. As far as involvement of the accused in crime in question is concerned, PW-1 Ashok Das, PW-2 Dilip Das and PW-3 Vinod have stated that they saw the accused attacking Koushalya Bai with knife.

8. Learned counsel for the accused/appellant argued that there is a discrepancy in the evidence of above witnesses regarding the number of assaults made by the accused, therefore, their evidence is not trustworthy.

9. In order to appreciate the argument advanced by counsel for the accused/appellant, we have scrutinized the evidence of above witnesses. They have categorically stated in their evidence that they saw the accused attacking Koushalya Bai with knife, when she in order to save herself ran out of the house, even then the accused chased and attacked her, therefore, there is no material contradiction in the evidence of these three witnesses and their evidence supports the prosecution case in material particulars.

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मामला क्रमांक Cr.A. 84 सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

10. Similarly, PW-4 Dr. Janeshwar Singh has stated that on 20.6.2000 Koushalya Bai was brought at the Primary Health Center, Chalgali, she was talking and on the request of police, he recorded her dying declaration (Ex.P/8) in which she has stated that her husband on account of suspicion that she was having illicit relationship with her brother-in-law attacked her with knife. In the cross-examination by counsel for the accused, he has stated that Koushalya Bai was speaking slowly, it is incorrect to say that on account of multiple injuries, Koushalya Bai was not in a position to speak, therefore, there is no evidence to disbelieve the evidence of this witness who is a government officer. Even the knife in question was recovered at the instance of the accused. Moreover, the evidence of eyewitnesses and dying declaration further stand corroborated by the medical of Dr. Narayan Singh (PW-7) who conducted postmortem on the body of Koushalya Bai. Therefore, involvement of the accused in crime in question is established and we do not find any illegality or infirmity in the judgment of the trial Court to that extent.

11. Learned counsel for the accused/appellant further argued that looking to the nature of injuries and the manner in which the assault was made, offence against the accused does not travel beyond Section 304-II of the IPC. She placed reliance on the judgment of the M.P. High Court in the matter of **Lallu @**

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मामला क्रमांक Cr.A. 84 सन् 200 2

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Brijmohan & others Vs. State of M.P. reported in **1996(1) MPJR SN 3.**

12. On the other hand, Mr. Shukla, G.A. for the State supported the impugned judgment of the trial Court.

13. In order to appreciate the above argument advanced by counsel for the accused/appellant, we have perused the evidence of PW-7 Dr. Narayan Singh, who conducted postmortem and stated that (i) there was a stab wound at the left breast in the size of 1.5 cm x 1.5 cm on the nipple of the breast, a stab wound above the nipple in the size of 1 cm x 1 cm, a stab wound below the nipple in the size of 1 cm x 1 cm; and (ii) a stab wound on the right side of nipple in the size of 2 cm x 2 cm, another stab wound in the middle of right breast in the size of 1 cm x 1 cm, a stab wound on the right side of the stomach in the size of 3 cm x 1 cm, a stab wound on the left side of the stomach in the size of 5 cm x 2 cm, as a result of which intestine came out. On internal examination it was found that there were injuries both in the superior and inferior lobe, the injury on the lung was sufficient in the ordinary course of nature to cause death and Koushalya Bai died on account of haemorrhage and shock. His report is Ex.P/15. The above nature of injuries shows that all the injuries were inflicted on the vital part of the body, as a result of which intestine came out, lung was also damaged and the doctor has stated that the lung injury was

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 7	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

sufficient in the ordinary course of nature to cause death. If the nature of injuries caused by the accused/appellant taken together, the evidence of the eyewitnesses suggest that since the accused, who is husband of the deceased, used to quafrel with the deceased as he was doubting her fidelity, as such deceased started residing at her parental house, the accused went to her parental house, attacked her with knife and when she in order to save herself ran out of the house, he chased and again caused multiple stab injuries on her breast, stomach and head with an intention to cause her death. Therefore, looking to the manner in which the assault was made, the part of the body where assault was made, the weapon of offence used and the force with which the assault was made, the intention of the accused to cause death of Koushalya Bai is writ large.

14. However; the judgment cited by counsel for the accused/appellant is of no help to the accused as the same is distinguishable on facts because in that case, all injuries inflicted by the accused on the deceased were on non-vital parts of the body and few injuries were grievous in nature, therefore, the High Court of M.P. considering the nature of injuries held that offence against the accused does not travel beyond Section 304-II of the IPC whereas in the present case, as discussed above, all the injuries inflicted by the accused were on vital parts of the body and as

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मामला क्रमांक Cr.A. 94 सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	such, intention of the accused to cause death of Koushalya Bai is writ large. 15. For the foregoing reasons, we do not find any illegality or infirmity in the impugned judgment of the trial Court whereby the accused/appellant has been convicted under Section 302 of the IPC. 16. In the result, the appeal being devoid of substance deserves to be dismissed and is hereby dismissed. Sd/- L.C.BHADOO Judge Sd/- DHIRENDRA MISHRA Judge	

GRPRJ — FS/246— 2/2007 — 50,000.